

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of PAULINE C. SHALL, Deceased.

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PAT BIHLER, SHIRLEY HILL, ROY GREEN,  
and ROBERT GREEN,

UNPUBLISHED  
April 29, 2003

Petitioners-Appellants/Cross-  
Appellees,

v

No. 229857  
Washtenaw Probate Court  
LC No. 94-103862-IE

HELEN ROY,

Respondent,

and

FIRST OF AMERICA BANK PERSONAL  
REPRESENTATIVE, a/k/a NATIONAL CITY  
BANK,

Respondent-Appellee/Cross-  
Appellant.

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Before: O'Connell, P.J., and Griffin and Markey, JJ.

PER CURIAM.

Petitioners appeal as of right an order awarding respondent National City Bank attorney fees pursuant to MCL 600.861(1) and MCR 5.801(B)(1)(u). Respondent cross appeals the order, seeking additional attorney fees. We reverse the portion of the order awarding respondent attorney fees and affirm the portion of the order declining to award it additional attorney fees.

Pauline C. Shall passed away in 1994 and National City Bank, formerly known as First of America Bank, was appointed as personal representative of her estate pursuant to her will. The beneficiaries of the will, Mrs. Shall's four grandchildren, petitioned the probate court to remove the bank as personal representative and were successful. The bank then moved for reconsideration and was ultimately reinstated as personal representative. The probate court ordered the estate to pay the bank attorney fees, which were incurred in defending its removal.

It is well established that attorney fees incurred by a personal representative to defend against a petition for his removal are properly chargeable against the estate where no wrongdoing is proven. *In re Hammond Estate*, 215 Mich App 379, 387; 547 NW2d 36 (1996). In the present case, the bank voluntarily involved itself in a complicated situation regarding its capacity as personal representative and regarding a joint bank account held between the decedent and her sister, Helen Roy. Once the bank was removed as personal representative, it moved for reconsideration. Although the bank was ultimately successful in getting reinstated, it was improper to charge the estate with the expenses incurred by the bank in relitigating its position as personal representative after it had already been removed by the probate court. Because the bank engaged in wrongdoing, we find the probate court's award of attorney fees constituted an abuse of discretion.

The ownership of the joint bank account was contested because of the circumstances surrounding its formation. To determine ownership of the joint bank account, Mrs. Shall's heirs filed suit against Helen Roy.<sup>1</sup> The bank then unnecessarily stepped in and became a primary player in the litigation. This action was taken by the bank in its corporate capacity, not in its capacity as personal representative. Generally, we have held that "[a]ttorney fees are chargeable to the estate . . . only where the services of the attorney were on behalf of and beneficial to the estate." *In re Valentino Estate*, 128 Mich App 87, 94-95; 339 NW2d 698 (1983). Specifically seeking to exclude the joint bank account from the estate was detrimental to the estate and constituted wrongdoing.

The probate court attempted to allocate attorney fees in proportion to the bank's actions in its capacity as personal representative and its actions in its capacity as a corporate entity. However, the bank's actions became so intertwined that it would be impossible to allocate the attorney fees and expenses properly between the dual roles the bank was playing. See *In re Davis' Estate*, 312 Mich 258, 265; 20 NW2d 181 (1945), in which our Supreme Court ruled that where attorney fees were not incurred for the benefit of the estate, but were incurred by the personal representative in defending himself against charges of fraud and wrongdoing, it would be impossible to allocate the attorney fees and expenses properly between the personal representative as an individual, as trustee, and as administrator. We review an award of attorney fees for an abuse of discretion. *In Re Attorney Fees & Costs*, 233 Mich App 694; 593 NW2d 589 (1999). An abuse of discretion is found only in cases where the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). Any attempt to allocate attorney fees in an equitable form is an impossibility in light of the bank's inextricably intertwined role as corporate entity and personal representative. The line between the two roles was so indistinguishable as to render the probate court's effort to properly allocate attorney fees an abuse of discretion.

On cross appeal, respondent argues that the probate court abused its discretion when it did not order the estate to pay attorney fees incurred in determining the ownership of the joint bank account. MCL 700.3709 states:

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<sup>1</sup> It appears the bank also filed suit at or about the same time the heirs filed their petition.

The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of, or to determine title to, property.

Although the bank argues that its actions in seeking to have the joint bank account excluded from the estate comply with this statute, we do not conclude that the bank's action of spearheading the lawsuit to exclude the bank account from the estate was "reasonably necessary for the management, protection, and preservation" of the estate. On the contrary, the issue of ownership of the joint bank account was already being litigated between the beneficiaries of the will and Helen Roy. Therefore, it was unnecessary for the bank to step in and involve itself in the determination of the ownership of the joint bank account.

We have held that "[a]n estate is benefitted by legal services that increase or preserve the size of the decedent's estate." *In re Prichard Estate*, 164 Mich App 82, 87; 416 NW2d 331 (1997). Here, the legal fees were incurred by the bank in an attempt to reduce the estate. Therefore, the probate court did not abuse its discretion in declining to charge the estate with attorney fees incurred in the determination of the ownership of the joint bank account.

Affirmed in part and reversed in part.

/s/ Peter D. O'Connell  
/s/ Richard Allen Griffin